

§ 105-129.108. (See note for repeal) Tax credited; credit limitations.

(a) Tax Credited. – The credits provided in this Article are allowed against the franchise tax imposed in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, or the gross premiums tax imposed in Article 8B of this Chapter. The taxpayer may take a credit allowed by this Article against only one of the taxes against which it is allowed. The taxpayer must elect the tax against which a credit will be claimed when filing the return on which it is claimed, and this election is binding. Any carryforwards of a credit must be claimed against the same tax.

(b) Return. – A taxpayer may claim a credit allowed by this Article on a return filed for the taxable year in which the certified historic structure was placed into service. When an income-producing certified historic structure as defined in G.S. 105-129.105 is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the qualified rehabilitation expenditures associated with the phase placed into service during that year.

(c) Cap. – A credit allowed under this Article may not exceed the amount of the tax against which it is claimed for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding nine years.

(d) Forfeiture for Disposition. – A taxpayer who is required under section 50 of the Code to recapture all or part of the federal credit for rehabilitating an income-producing historic structure located in this State forfeits the corresponding part of the State credit allowed under G.S. 105-129.105 with respect to that historic structure. If the credit was allocated among the owners of a pass-through entity, the forfeiture applies to the owners in the same proportion that the credit was allocated.

(e) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has qualified for the credit allowed under G.S. 105-129.105 disposes of all or a portion of the owner's interest in the pass-through entity within five years from the date the rehabilitated historic structure is placed in service and the owner's interest in the pass-through entity is reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the historic structure was placed in service, the owner forfeits a portion of the credit. The amount forfeited is determined by multiplying the amount of credit by the percentage reduction in ownership and then multiplying that product by the forfeiture percentage. The forfeiture percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the Code.

(f) Exceptions to Forfeiture. – Forfeiture as provided in subsection (e) of this section is not required if the change in ownership is the result of any of the following:

- (1) The death of the owner.
- (2) A merger, consolidation, or similar transaction requiring approval by the shareholders, partners, or members of the taxpayer under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

(g) Liability From Forfeiture. – A taxpayer or an owner of a pass-through entity that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.21, computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

(h) Substantiation. – To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue, including a copy of the certification obtained from the State Historic Preservation Office verifying that the historic

structure has been rehabilitated in accordance with the requirements set out in this Article, and a copy of the eligibility certification if the historic structure is located in an eligible targeted investment site and the targeted investment bonus is claimed. Every taxpayer claiming a credit under this Article must maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

(i) No Double Credit. – A taxpayer that claims a credit under this Article may not also claim a credit under Article 3D or Article 3H of this Chapter with respect to the same activity. (2015-241, s. 32.3(a); 2015-264, s. 54.5(b); 2015-268, s. 10.1(b).)